IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

1.CIVIL WRIT No. 1652 of 2006

SMT. NAJMA
V/S
SMT. MUMTAZ

2.CIVIL WRIT No. 1653 of 2006

MISS.ZUBAIDA @ ZEBUNISHA
V/S
SMT.MUMTAJ

3.CIVIL WRIT No. 1651 of 2006

SMT.IQBAL
V/S
SMT.MUMTAZ

Mr. ABDUL AZIZ KHAN, for the appellant / petitioner

Mr. KN VYAS, for the respondent

Date of Order : 30.7.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

In all these three matters. The plaintiff respondent is common, and the question involved is common. These three writ petitions are being decided by this common order. By the impugned order, the learned trial court has refused the petitioners' application filed under O. 6 Rule 17.

The relevant facts are that on 14.1.2003 the plaintiff filed a copy of the sale deed dt. 7.5.1986 said to have been executed in favour of plaintiff's husband by one Zulfikar thereupon the petitioners filed affidavit of Zulfikar on 1.2.1983 wherein Zulfikar denied to have executed such sale deed. Thereafter the petitioners filed application under O. 6 Rule 17 C.P.C., and the plaintiff also filed application for cross-examining Zulfikar. The petitioners sought to incorporate a plea about the sale deed being a fabrication, and not having the effect of establishing the plaintiff to be landlord. The learned trial court has dismissed that application by observing interalia that the plaintiff has not taken any pleading about sale deed in the plaint, and therefore, it is not necessary to allow the defendant to amend the written statement. It is informed by the learned counsel for the parties that the plaintiff filed suit against the petitioners claiming to be landlord which fact has been denied by the defendant rather defendant claimed title of the premises to be with themselves. It is after filing of this written statement that the plaintiff has filed the aforesaid sale deed.

In my view, since the plaintiff seeks to rely upon this sale deed in support of his averment in the plaint, it was necessary for the defendant to take appropriate pleadings to project the defendant's stand qua the sale

deed.

In that view of the matter, in my view, the impugned order requires to be set aside, and the petitioners' application for amendment of written statement is required to be allowed.

Accordingly, these writ petitions are allowed. The impugned orders are set aside, and the petitioners' application for amendment of the written statement is allowed subject to payment of cost of Rs. 1,000/- in each of the suits. The petitioners should now file the amended written statement within a period of two weeks from today. The learned trial court shall thereafter proceed with the trial of the suit most expeditiously.

(N P GUPTA),J.

/sushil/